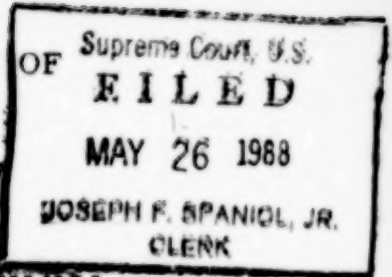


IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1987



COMMONWEALTH OF PENNSYLVANIA,

Petitioner

v.

UNION GAS COMPANY,

Respondent

On Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

JOINT APPENDIX

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Petition for Certiorari Filed January 21,
1988; Certiorari Granted March 21, 1988

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RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>No.</u>	<u>Proceedings</u>
<u>1983</u>		
5/23	1	Complaint filed.
7/22	4	Answer filed.
7/22		Issue joined.
8/1	5	Deft's third party. complaint, filed.
8/9	9	Comm. of Pa's Motion to Dismiss Third Pty. Complaint, Memo, Notice, Certificate filed
8/25	10	Deft's memo in support of opposition to third party deft. Commonwealth of PA's motion to dismiss third party complaint, filed.
8/30	11	Commonwealth of PA's reply brief to deft's motion to dismiss, filed.
10/20	12	Answer of the Borough of Stroudsburg to third party. complaint with crossclaim, filed.
10/28	13	Order dated 10/28/83 that Commonwealth of PA's motion to dismiss third party complaint is granted, all claims against it are dismissed filed. 10/28/83 entered and copies mailed.

<u>Date</u>	<u>No.</u>	<u>Proceedings</u>
11/16	14	Memorandum, Bechtle, J., Dated 11/15/83 Re: Granting Commonwealth's Motion to Dismiss Third Pty. Complaint, filed. 11/17/83 entered and copies mailed.
<u>1984</u>		
4/28	28	Plff's motion to amend complaint, memo, certificate, filed (amended complaint attached).
5/7	29	Union Gas' memo in opposition in motion to amend complaint, certificate, filed.
5/16	30	Order dated 5/16/84 that plffs. motion to amend complaint is granted in part and denied in part, motion granted as to Counts I and II, Count III is denied, plff. shall file copy of amended complaint, filed. 5/16/84 entered and copies mailed.
5/24	31	Amended complaint, filed.
8/9	45	Union Gas Company Answer to Amended Complaint, certificate of service, filed.

<u>Date</u>	<u>No.</u>	<u>Proceedings</u>
<u>1984</u>		
8/10	47	Amended Third Party Complaint, filed.
8/20	48	Motion of Commonwealth of Pennsylvania to Dismiss or in the alternative to strike the amended third party complaint, notice, memo, certificate of service filed.
8/22	49	Union Gas Co.'s Answer to Commonwealth's Motion to Dismiss or strike the amended third party complaint, memo, certificate filed.
9/13	51	Order that Motion of Commonwealth of Pennsylvania to Dismiss is granted, etc., filed.
10/12	53	Answer of Third party deft. to amended third party complaint, counterclaims against plff., filed.
<u>1985</u>		
2/4	83	Order that Action is Dismissed with Prejudice, etc., filed. 2/4/85 entered and copies mailed.

<u>Date</u>	<u>No.</u>	<u>Proceedings</u>
<u>1985</u>		
3/27	84	Notice of Appeal of Union Gas Company, filed. (USCA #85-1177) 3/28/85 copies to: USCA, D. Spitz, J.G. Sheehan AUSA, J.J.C. Donovan, Esq., R.A. Metergia Esq., C.G. Wynkoop, Esq.
3/27	85	Copy of Clerk's Notice of USCA, filed.
4/9		Record complete for purposes of appeal-transcript not needed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff)	
)	CIVIL ACTION
)	NO. 83-2456
v.)	
)	
UNION GAS COMPANY,)	
)	
Defendant)	

COMPLAINT

Plaintiff, the United States of America, pursuant to the authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency alleges that:

1. This is a civil action brought by the United States against Union Gas Company (Defendant) under Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9604 and 9607,

and sections 311(b)(3) and 311(f)(2) of the Clean Water Act, 33 U.S.C 1321(b)(3) and (f)(2) for the recoupment of costs incurred to date in responding to the release and threatened release of hazardous substances into the environment specifically Brodhead Creek, a navigable water of the United States, from the facility owned and operated by Defendant in Stroudsburg, Pennsylvania.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and § 1345, 42 U.S.C. § 9607 and § 9613 and 33 U.S.C. 1321(n). Venue is proper in this district because Defendant resides and has its principal office in this district and is doing business here, 28 U.S.C. § 1391(c), 42 U.S.C. § 9613(b).

DEFENDANT

3. Union Gas Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

4. The terms "Defendant", "Union Gas Company", and "Union Gas" as they appear in this complaint refer to the Union Gas Company as it presently exists and to all companies of which Union Gas is a successor in interest or an assign.

5. Defendant currently owns and operates a plant for the distribution of natural gas at 203 Main Street Stroudsburg, Pennsylvania.

6. For more than fifty years, Defendant operated a coal gasification plant at 203 Main Street. The coal gasification plant produced coal gas and generated coal tar wastes.

7. Defendant disposed of the coal tar wastes on the 203 Main street premises and properties contiguous thereto by dumping it on the surface, dumping it into pits and injecting it into subsurface levels.

8. Coal tar wastes generated by Defendant have reached the groundwater under the 203 Main Street site and migrated into Brodhead Creek, a navigable water of the United States.

9. Coal tar is migrating and will continue to migrate towards Brodhead Creek. This migration constituted a release and a substantial threat of future release of coal tar into Brodhead Creek.

10. Some of the constituents of coal tar are acenaphthene, ethyl benzene, flouranthene, phenanthrene, and

pyrene which are designated as toxic pollutants pursuant to Section 307(a) of the Clean Water Act (CWA), 33 U.S.C. § 1317(a). Naphthalene and xylene, also found in coal tar, are designated as hazardous substances pursuant to Section 311(b)(2)(A) of the Clean Water Act, 33 U.S.C. § 1321(b)(2)(A). 40 C.F.R. 116.4.

11. Coal tar contains creosote oil the sludge of which is a hazardous substance under Section 3001 of the "Resources Conservation and Recovery Act" (RCRA), 42 U.S.C. § 6921, 45 Fed.Reg. § 261.32 (May 19, 1980).

12. Substances listed pursuant to Sections 307 and 311 of CWA and Section 3001 of RCRA are hazardous substances under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

13. Coal tar has been found in Brodhead Creek, in the groundwater under and surrounding the Union Gas facility,

and in pits and borings on and surrounding the Union Gas facility.

FIRST CLAIM FOR RELIEF

14. The allegations contained in paragraphs 1 through 13 are realleged.

15. Section 104 of CERCLA, 42 U.S.C. § 9604, provides in pertinent part:

104(a)(1) - Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare,

the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment,

104(b) - Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appro-

priate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of the Act.

16. The Administrator of the Environmental Protection Agency is the President's delegate under Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604 (a) and (b), as provided for in Section 2(e) of E.O. No. 12316, 46 Fed. Reg. 42237 (August 14, 1981).

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

(1) the owner and operator of ... a facility,

(2) any person who at the time of disposal of any hazardous substance owned or

operated any facility at which such hazardous substances were disposed of,

* * *

(4)shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan

18. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines "facility" to include:

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located

19. The Union Gas site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and an onshore facility within the meaning of 33 U.S.C. 1321(a).

20. Defendant Union Gas is a person as defined by Section 101(22) of the Act, 42 U.S.C. § 9601(22).

21. Section 101(14) of CERCLA, 42 U.S.C. § 9601 (14), defines "hazardous substance to include:

"(A) any substance designated pursuant to, Section 311(b) (2)(A) of the Federal Water

Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act . . . (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act,..."

22. The materials identified in paragraph 10 of this complaint are hazardous substances within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601 (14).

23. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment..."

24. Prior to the response measures of the administrator described in paragraph 29, releases from the Union Gas facility into the environment had occurred, were continuing to occur, and were threatening to occur within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. Defendant Union Gas Company engaged in operation of the Union Gas facility at the time of disposal of coal tar and other hazardous substances at the facility. Defendant is within the class of persons described

as being liable under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

26. Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) defines "response" to mean "remove, removal, remedy, and remedial action."

27. Section 101(23) of CERCLA, 42 U.S.C. § 9601(23) defines "remove" or "removal," in pertinent part, as:

"... the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release

of hazardous substances, the disposal of removed material, or the taking of such other action as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access ..., action taken under 104(b) of this Act...."

28. Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), defines "remedy" or "remedial action," in pertinent part, as:

"those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment...."

29. The Administrator, after demand upon Union Gas, which company failed to comply, has undertaken response measures not inconsistent with the National Contingency Plan concerning the release and threatened release of hazardous substances from the Union Gas

facility. These measures include, inter alia, the dredging of the back channel of Brodhead Creek and the installation of a slurry wall.

30. The United States has incurred costs to date from the Hazardous Substance Response Fund in excess of \$450,000, in responding to the release and threatened release of hazardous substances from the Union Gas facility plus interest.

31. Section 107 of CERCLA, 42 U.S.C. § 9607, authorizes the recovery of costs incurred by the United States in responding to the release and threatened release of hazardous substances from the Union Gas facility.

32. The Defendant is liable to the United States for all costs, including the costs of removal and remedial actions, that the United States

has incurred in responding to the release and threatened release of hazardous substances from the Union Gas facility. Plaintiff has demanded reimbursement but Defendant has refused and continues to refuse.

SECOND CLAIM FOR RELIEF

33. Plaintiff realleges paragraphs 1 through 10, 13, 19 and 29.

34. Defendant discharged hazardous substances from its onshore facility into Brodhead Creek, a navigable water of the United States (33 U.S.C. 1362(7)) in a harmful quantity in violation of 33 U.S.C. 1321(b)(3).

35. After the discharge, Defendant failed and neglected to remove the hazardous substance from Brodhead Creek and to protect against further discharges.

36. By reason of Defendant's failures, the United States acted pursuant to 33 U.S.C. 1321(c)(1) and incurred expenses in the amount of \$270,000 plus interest.

37. By reason of the foregoing, Defendant became liable by reason of 33 U.S.C. 1321(f)(2) to reimburse the United States for direct and related costs incurred by it.

38. Plaintiff has demanded reimbursement but Defendant has refused and continues to refuse.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that:

1. The Defendant be ordered to pay Plaintiff all costs and expenses Plaintiff has incurred in responding to the hazard created by the release and

threatened release of hazardous substances from the facility into the environment and in responding to the discharge of hazardous substances from its onshore facility into the navigable waters of the United States.

2. The Court award Plaintiff its costs of suit herein and such other relief as the Court finds appropriate and just.

Respectfully submitted,

/s/_____
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/s/
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	:	
AMERICA,	:	
Plaintiff	:	
v.	:	CIVIL ACTION
	:	NO. 83-2456
UNION GAS COMPANY,	:	
	:	
Defendant	:	Jury Trial
	:	Demanded

ANSWER

Defendant, Union Gas Company,
answers the Complaint filed by plaintiff
as follows:

1. Admitted only that
plaintiff so asserts.
2. Admitted.
3. Admitted.
4. Admitted only that
plaintiff so asserts. Defendant
expressly denies liability of any
assignor or predecessor in interest.

5. Admitted.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Defendant incorporates herein its answers to paragraphs 1 through 13 as though fully set forth.

15. Admitted that the Section is correctly quoted in part, but the quotation is misleading in that it omits the following pertinent proviso:

"unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release

emanates, or by any other responsible party."

16. Admitted.

17. Admitted only that the Section is correctly quoted.

18. Admitted only that the Section is correctly quoted.

19. Denied.

20. Denied.

21. Admitted only that the Section is correctly quoted.

22. Denied.

23. Admitted only that the Section is correctly quoted.

24. Denied.

25. Denied.

26. Admitted only that the Section is correctly quoted.

27. Admitted only that the Section is correctly quoted.

28. Admitted only that the Section is correctly quoted.

29 Denied.

30. Denied.

31. Denied.

32. Denied.

33. Defendant incorporates herein its answers to paragraphs 1 through 10, 13, 19 and 29 as through fully set forth.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Admitted.

WHEREFORE, defendant Union Gas Company prays that this Court dismiss the Complaint.

Second Defense

39. The Complaint fails to state a cause of action upon which relief can be granted.

Third Defense

40. The Complaint must be dismissed for plaintiff's failure to join parties known to plaintiff that are indispensable to the just adjudication of this litigation.

Fourth Defense

41. The retroactive application of the statutes and regulations relied on by plaintiff violates defendant's right to due process of law and the United States Constitution's proscription against ex post facto laws.

Fifth Defense

42. Defendant is not liable for the recoupment of costs incurred by the United States in responding to the averred release into Brodhead Creek because the release was caused by the intervening negligent acts and omissions of the United States Army Corps of Engineers, the Pennsylvania Department of Environmental Resources, the Borough of Stroudsburg and other third parties acting in concert with them over whom defendant exercised no control.

Sixth Defense

43. The United States is estopped from recouping the costs incurred by it in responding to the averred release into Brodhead Creek, since the release was caused in whole or

in part by the intervening negligent acts and omissions of the United States Army Corps of Engineers and its agents, employees and contractors over whom defendant exercised no control.

Seventh Defense

44. Defendant has exercised due care in the circumstances. The averred release results from the negligent acts and omissions of the United States Army Corps of Engineers, Pennsylvania Department of Environmental Resources, Borough of Stroudsburg and other third parties acting in concert with them and the consequences of these acts could not have been reasonably foreseen and provided for by the defendant.

Eighth Defense

45. Plaintiff has failed to mitigate its alleged damages.

46. The United States is barred from recouping the response costs sought by the Complaint because its response was: (a) unnecessary and inappropriate for the actual problem involved; (b) inconsistent with the national contingency plan; (c) not based upon a reasonable assessment of the potential for injury from the asserted release; and/or (d) not cost effective.

47. The United States is barred from the recoupment of response costs sought by the Complaint because all or part of those costs were: (a) unnecessary or not cost effective and/or (b) not consistent with the national contingency plan.

48. The United States is barred from recouping the response costs sought by the Complaint because (a) it failed to make an adequate determination of whether the averred release presented an imminent and substantial danger to the public health or welfare, and (b) the proposed remedial plan of a property owner, Pennsylvania Power and Light Company, would have abated the alleged release without further action or expense by the United States.

Ninth Defense

49. Alternatively, even if it is determined that defendant is liable for the response costs and those costs were necessary and appropriate under the circumstances and consistent with the national contingency plan, then defendant is not liable for the entire amount

of the response costs, but only its aliquot share based on the ownership and operation of the coal gasification plant and adjacent real estate by others and the negligent acts and omissions of the United States Corps of Engineers, the Pennsylvania Department of Environmental Resources, the Borough of Stroudsburg and others, and other relevant factors.

WHEREFORE, defendant Union Gas Company prays that the Complaint be dismissed.

July 22, 1983

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Attorneys for defendant
Union Gas Company

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	
UNION GAS COMPANY,	:	
Defendant and	:	
Third Party	:	CIVIL ACTION
Plaintiff	:	NO. 83-2456
v.	:	
COMMONWEALTH OF PENNSYLVANIA and THE BOROUGH OF STROUDSBURG,	:	
Third Party	:	
Defendants	:	

THIRD PARTY COMPLAINT

Parties

1. Third party plaintiff is Union Gas Company, the defendant in the above action.

2. Third party defendant, the Commonwealth of Pennsylvania (the "Commonwealth"), is a sovereign political entity which has as two of its agencies the Department of General Services ("DGS") and the Department of Environmental Resources ("DER").

3. The Commonwealth is subject to the jurisdiction and venue of this Court in that sovereign immunity has been legislatively waived by virtue of 42 Pa. C.S. § 8522(b)(4).

4. The Borough of Stroudsburg is a political subdivision of the Commonwealth of Pennsylvania with its principal place of business in Stroudsburg, Monroe County, in the Eastern District of Pennsylvania.

Cause of Action

5. On or about May 23, 1983, the plaintiff United States of America commenced the above action against Union Gas Company. A copy of the Complaint is attached hereto as Exhibit "A".

6. The Complaint alleges that defendant unlawfully discharged coal tar into Brodhead Creek in Stroudsburg, Pennsylvania.

7. For a period of years prior to 1935, coal tar was deposited at a location adjacent to Brodhead Creek currently owned by Pennsylvania Power & Light Company.

8. In or about 1959, at the request and with the assistance of the Commonwealth, acting through DGS and DER, and the Borough of Stroudsburg, the U.S. Army Corps of Engineers relocated the Brodhead Creek stream bed by excavating portions of the earthen barrier between the coal tar and the pre-existing stream bed, and erected dikes and levees thereon.

9. In or about 1960, the Borough of Stroudsburg received permanent easements over the portion of Brodhead Creek and its adjacent bank at issue in this proceeding.

10. In or about 1980, the Borough of Stroudsburg conveyed the aforesaid permanent easements to the Commonwealth.

11. Third party defendants are "owners" and "operators", as those terms are used in Section 197(a) of CERCLA , 42 U.S.C. §9607(a), of the Brodhead Creek stream bed and the adjacent bank at issue in this proceeding.

12. Third party defendants, together with other persons, negligently caused, or contributed to, the discharge of coal tar into Brodhead Creek by, inter alia:

(a) Causing the excavation of portions of the earthen barrier between the coal tar and Brodhead Creek;

(b) Erecting dikes and levees on the bank of Brodhead Creek thereby causing, inter alia, downcutting of the stream bed and bank; and

(c) Improperly maintaining the stream bed and bank.

13. Although Union Gas Company denies that such allegations are true, and that such allegations are sufficient to state a claim against Union Gas Company, the allegations made by plaintiff against Union Gas Company are properly made against the third party defendants.

14. In the event the plaintiff proves that Union Gas Company is liable on any of the counts of the Complaint, which liability is expressly denied,

then third party defendants are liable over to Union Gas Company for any and all damages that may be assessed against Union Gas Company.

WHEREFORE, Union Gas Company hereby demands that judgment be entered against third party defendants Commonwealth of Pennsylvania and Borough of Stroudsburg for any and all damages that may be awarded to and against Union Gas Company, and Union Gas Company further demands judgment for the costs of suit, and such other relief as may be proper.

August 1, 1983

/s/_____
DAVID H. MARION

Of Counsel:

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(412) 434-8600 Attorneys for third
party plaintiff,
Union Gas Company

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	:	
AMERICA,	:	
Plaintiff	:	
v.	:	
	:	
UNION GAS COMPANY,	:	
Defendant and	:	
Third Party	:	CIVIL ACTION
Plaintiff	:	NO. 83-2456
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA and	:	
THE BOROUGH OF	:	
STROUDSBURG,	:	
Third Party	:	
Defendants	:	

THIRD PARTY DEFENDANT, COMMONWEALTH
OF PENNSYLVANIA'S MOTION TO
DISMISS THIRD PARTY COMPLAINT

Third party Defendant, Commonwealth of Pennsylvania, by its attorney, Marc G. Brecher, Deputy Attorney General, hereby requests this Honorable Court to dismiss the Third Party Complaint filed against it with prejudice. This Motion is presented to

the Court pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and the following reason:

This Court lacks jurisdiction over the Third Party Complaint against the Commonwealth of Pennsylvania as a result of the Eleventh Amendment to the United States Constitution.

Respectfully submitted,

LeROY S. ZIMMERMAN
Attorney General

BY: /s/
Marc. G. Brecher
Deputy Attorney General

Office of Attorney General
206 State Office Building
Philadelphia, PA 19130
(215)351-2402

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF :
AMERICA : CIVIL ACTION
: NO. 83-2456
v. :
: UNION GAS COMPANY :

ORDER

AND NOW, TO WIT, this 28th day of October, 1983, IT IS ORDERED that the motion of third-party defendant, Commonwealth of Pennsylvania, to dismiss the third party complaint as to it is granted and all claims against the Commonwealth of Pennsylvania are dismissed. The Court's Opinion will be filed in due course.

/s/

LOUIS C. BECHTLE, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF :
AMERICA, : CIVIL ACTION
Plaintiff :
v. : NO. 83-2456
UNION GAS COMPANY, :
Defendant :

AMENDED COMPLAINT

Plaintiff, the United States of America, pursuant to the authority of the Attorney General and at the request of the administrator of the United States Environmental Protection Agency, alleges that:

1. This is a civil action brought by the United States against Union Gas Company (Defendant) under Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604 and 9607, Sections 311(b)(3) and 311(f)(2) of the Clean

Water Act, 33 U.S.C. § 1321(b)(3) and (f)(2), and Section 7003 of the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6973, for the recoupment of costs incurred to date in responding to the release and threatened release of oil, hazardous substances and solid wastes into the environment, specifically, Brodhead Creek, a navigable water of the United States, from the facility owned and operated by Defendant in Stroudsburg, Pennsylvania.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1345, 42 U.S.C. § 6973, 9607 and 9613, and 33 U.S.C. § 1321(n). Venue is proper in this district because Defendant resides and has its principal office in this district and is doing business here, 28 U.S.C. § 1391(c), and 42 U.S.C. § 9613(b).

DEFENDANT

3. Union Gas Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

4. The terms "Defendant", "Union Gas Company", and "Union Gas" as they appear in this complaint to refer to the Union Gas Company as it presently exists and to all companies of which Union Gas is a successor in interest or an assign.

5. Union Gas Company is the corporate successor to Citizens Gas Company. Defendant currently owns and operates a plant for the distribution of natural gas at 203 Main Street Stroudsburg, Pennsylvania.

6. For more than fifty years from at least 1890 to 1948, Defendant operated a carburetted water gas coal

gasification plant at 203 Main Street, Stroudsburg, Pennsylvania. The coal gasification plant produced coal gas from anthracite coal and transmitted it to local homes and business and generated wastes, including tars, oils, particulates and ash.

7. Defendant disposed of the wastes, including coal tar and oils, on the 203 Main Street premises and properties continuous thereto by dumping it on the surface, dumping it into pits and injecting it through wells into sub-surface levels.

8. Coal tar and oil wastes generated by Defendant have reached the groundwater under the 203 Main Street site and migrated into Brodhead Creek, a navigable water of the United States.

9. Coal tar and oils have migrated and, absent appropriate remedial action, will continue to migrate toward Brodhead Creek. This migration constituted a release and a substantial threat of future release of coal tar and oils into Brodhead Creek.

10. Certain constituents of coal tar including acenaphthene, ethyl benzene, flouranthene, phenanthrene, and pyrene, are designated as toxic pollutants pursuant to Section 307(a) of the Clean Water Act (CWA), 33 U.S.C. § 1317(a). Naphthalene, xylene, and benzene, also found in coal tar, are designated as hazardous substances pursuant to Section 311(b)(2)(A) of the CWA, 33 U.S.C. § 1321(b)(2)(A). 40 C.F.R. § 116.4.

11. Coal tar contains creosote oil the sludge of which is hazardous under Section 3001 of RCRA, 42 U.S.C. § 6921, 45 Fed. Reg. § 261.32 (May 19, 1980). Coal tar is a solid waste under RCRA.

12. Substances listed pursuant to Sections 307 and 311 of CWA and Section 3001 of RCRA are "hazardous substances" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

13. Coal tar has been found in Brodhead Creek, in the groundwater under and surrounding the Union Gas facility, and in pits and borings on and surrounding the Union Gas facility.

FIRST CLAIM FOR RELIEF
- SUPERFUND (CERCLA) -

14. The allegations contained in paragraphs 1 through 13 are realleged.

15. Section 104 of CERCLA, 42 U.S.C. § 9604, provides in pertinent part:

104(a)(1) - Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant of contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its

removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, ...

104(b) - Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and

other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or of the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response action, to recover the costs thereof, and to enforce the provisions of the Act.

16. The Administrator of the Environmental Protection Agency is the President's delegate under Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), as provided for in Section 2(e) of E.O. No. 12316, 46 Fed. Reg. 42237 (August 14, 1981).

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

- (1) the owner and operator of ...
a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated

any facility at which such hazardous substances were disposed of,

* * *

(4)shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government... not inconsistent with the national contingency plan

18. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines "facility" to include:

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located

19. The Union Gas site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and an onshore facility within the meaning of 33 U.S.C. 1321(a).

20. Defendant Union Gas is a person as defined by Section 101(22) of the Act, 42 U.S.C. § 9601(22).

21. Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), defines "hazardous substance" to include:

(A) any substance designated pursuant to, Section 311(b)(2)(A) of the Federal Water Pollution

Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act... (D) any toxic pollutants listed under Section 307(a) of the Federal Water Pollution Control Act, ...

22. The materials identified in paragraphs 10 and 11 of this complaint are hazardous substances within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging,

injecting, escaping leaching, dumping, or disposing into the environment..."

24. Prior to the response measures of the Administrator described in paragraph 29, releases from the Union Gas facility into the environment had occurred, were continuing to occur, and were threatening to occur within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. Defendant Union Gas Company engaged in operation of the Union Gas facility at the time of disposal of coal tar and other hazardous substances at the facility. Defendant is within the class of persons described as being liable under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

26. Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) defines "response" to mean "remove, removal, remedy, and remedial action."

27. Section 101(23) of CERCLA, 42 U.S.C. § 9601(23) defines "remove" or "removal," in pertinent part, as:

... the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such action as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal or removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or

welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access ..., action taken under 104(b) of this Act...

28. Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), defines "remedy" or "remedial action," in pertinent part, as:

those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of

hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment....

29. The Administrator, after demand upon Union Gas, to which Union Gas failed to respond, has undertaken response measures not inconsistent with the National Contingency Plan concerning the release and threatened release of hazardous substances and oils from the Union Gas facility. These measures include, inter alia, the dredging of the back channel of Brodhead Creek and the installation of a slurry wall.

30. The United States has incurred response costs to date in excess of \$720,000, in responding to the release and threatened release of hazardous substances from the Union Gas

facility. The United States continues to incur costs.

31. The Defendant is liable to the United States for all costs, including the costs of removal and remedial actions and enforcement, that the United States has incurred in responding to the release and threatened release of hazardous substances from the Union Gas facility. Plaintiff has demanded reimbursement but Defendant has refused and continues to refuse to pay plaintiff.

SECOND CLAIM FOR RELIEF
- CLEAN WATER ACT

33. Plaintiff realleges paragraphs 1-32.

34. Defendant owns and operates an on shore facility as that term is defined under 33 U.S.C. § 1321.

35. Brodhead Creek, and the surrounding wetlands which are regularly or periodically inundated, are "navigable waters" of the United States.

36. Defendant discharged oil and hazardous substances into and upon Brodhead Creek, and/or adjoining shorelines and wetlands.

37. The discharge of oil by defendant, as set forth in the preceding paragraph, was in "harmful quantities", as that term is used in 33 U.S.C. § 1321, in violation of 33 U.S.C. § 1321(b)(3).

38. Union Gas Company was the operator and owner and is presently the owner of an on shore facility, from which there was a discharge, and a substantial threat of discharge of oil, into or upon the navigable waters of the United States, and adjoining shorelines

and wetlands, in violation of 33 U.S.C. § 1321(b)(3).

39. The United States, by its duly designated officer, acted to "remove" or "arrange for the removal of", as defined in 33 U.S.C. § 1321(a)(8), (c) such oil set forth in the preceding paragraph.

40. The costs incurred by the United States to perform the work set forth in the preceding paragraph are in an amount exceeding \$720,000. Plaintiff has demanded this sum from defendant, but defendant has failed and refused to pay said sum. Defendant is liable to plaintiff pursuant to 33 U.S.C. § 1321(f)(2).

Respectfully submitted,

/s/_____
EDWARD S. G. DENNIS, JR.
United States Attorney

/s/_____
ALEXANDER EWING, JR.
Assistant United States
Attorney

/s/_____
JAMES G. SHEEHAN
Assistant United States
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	:	
AMERICA,	:	
Plaintiff	:	
v.	:	
UNION GAS COMPANY,	:	
Defendant and	:	
Third Party	:	CIVIL ACTION
Plaintiff	:	NO. 83-2456
v.	:	
COMMONWEALTH OF	:	
PENNSYLVANIA and	:	
THE BOROUGH OF	:	JURY TRIAL
STROUDSBURG,	:	DEMANDED
Third Party	:	
Defendants	:	

ANSWER TO AMENDED COMPLAINT

Defendant, Union Gas Company,
answers the Amended Complaint filed by
plaintiff as follows:

1. Admitted only that plaintiff
so asserts.
2. Admitted, except it is
denied that this Court has jurisdiction
pursuant to 42 U.S.C. § 6973.
3. Admitted.

4. Admitted only that plaintiff so asserts. Defendant expressly denies liability of any assignor or predecessor in interest.

5. Admitted in part and denied in part. It is denied that Union Gas Company is the corporate successor to Citizens Gas Company. It is admitted that defendant currently owns and operates a business at 203 Main Street, Stroudsburg, Pennsylvania engaged in distributing natural gas.

6. Denied as stated. From 1890 to 1948, when it was dismantled, the predecessors to defendant operated a carburetted water gas plant at 203 Main Street, Stroudsburg, Pennsylvania. Typical solid wastes produced during the processing of coal by a carburetted water gas plant are tars, oils, ashes and particulates. The quantities and characteristics of the tars and oils

produced depend on the properties of the coal feedstock and the time-temperature profile of the coal in the gasifier. The commercial gas produced from the carburetted water gas plant was sold to homes and businesses in Stroudsburg.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Admitted, except that substances exempt from the definition of "hazardous substances" under the Resource Conservation and Recovery Act are also exempt under from the definition of "hazardous substance" under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and coal tar is so exempt.

13. Denied. By way of further answer, plaintiff violated Section 104(e)(1)(B) of CERCLA, 42 U.S.C. § 9604(e)(1)(B) by failing to give defendant one half of all samples taken or a receipt for all samples taken.

14. Defendant incorporates herein its answers to paragraphs 1 through 13 of the Amended Complaint.

15. Admitted that the Section is correctly quoted in part, but the quotation is misleading in that it omits the following pertinent proviso:

"unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party."

16. Admitted.

17. Admitted only that the Section is correctly quoted.

18. Admitted only that the Section is correctly quoted.

19. Denied.

20. Denied.

21. Admitted that the Section is correctly quoted in part, but the quotation is misleading in that it omits the following proviso:

"(but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress)"

22. Denied.

23. Admitted only that the Section is correctly quoted in part.

24. Denied.

25. Denied.

26. Admitted only that the Section is correctly quoted in part.

27. Admitted only that the Section is correctly quoted in part.

28. Admitted only that the Section is correctly quoted in part.

29. Denied.

30. Denied.

31. Denied.

[32] [Sic]

33. Defendant incorporates herein its answers to paragraphs 1 through 31 of the Amended Complaint.

34. Admitted that at present, defendant owns and operates an "onshore facility" within the meaning of 33 U.S.C. § 1321, which definition excludes land. By way of further answer, coal tar and oil were never released or discharged from this onshore facility

which was first constructed in the 1950's.

35. Admitted.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

WHEREFORE, defendant Union Gas Company prays that this Court dismiss the Amended Complaint.

Second Defense

41. The Amended Complaint fails to state a cause of action upon which relief can be granted.

Third Defense

42. The Amended Complaint must be dismissed for plaintiff's failure to join parties known to plaintiff that are indispensable to the just adjudication of this litigation.

Fourth Defense

43. The retroactive application of the statutes and regulations relied on by plaintiff violates defendant's right to due process of law and the United States Constitution's prescription against ex post facto laws.

44. The averred release or discharge took place prior to the enactment of the statutes relied upon by plaintiff, and those statutes are not retroactive in application.

Fifth Defense

45. Coal tar is a by-product of the processing of coal and is exempt from the definition of "hazardous substance" by virtue of 42 U.S.C. § 6921 (a)(3)(A). Therefore, coal tar and its

constituents are exempt from the definition of "hazardous substance" under 42 U.S.C. § 9601(14).

Sixth Defense

47. No reportable or harmful quantity of oil or a hazardous substance has been released or discharged.

48. The alleged oil sheen caused no actual or measurable harm.

Seventh Defense

49. Defendant is not liable for the recoupment of costs incurred by the United States in responding to the averred release or discharge into Brodhead Creek because the release or discharge was caused by the intervening negligent acts and omissions of the United States Army Corps of Engineers, the Commonwealth of Pennsylvania, the

Borough of Stroudsburg and other third parties acting in concert with them over whom defendant exercised no control.

Eighth Defense

50. The United States is estopped from recouping the costs incurred by it in responding to the averred release or discharge into Brodhead Creek, since the release or discharge was caused in whole or in part by the intervening negligent acts and omissions of the United States Army Corps of Engineers and its agents, employees and contractors over whom defendant exercised no control.

Ninth Defense

51. Defendant has exercised due care in the circumstances. The averred release and discharge results from the acts, omissions and/or negligence of the United States Army

Corps of Engineers, the Commonwealth of Pennsylvania, Borough of Stroudsburg and other third parties acting in concert with them and the consequences of these acts could not have been reasonably foreseen and provided against by the defendant.

Tenth Defense

52. Plaintiff has failed to mitigate its alleged damages.

53. The United States is barred from recouping the incurred costs sought by the Amended Complaint because its response was: (a) unnecessary and inappropriate for the actual problem involved; (b) inconsistent with the national contingency plan; (c) not based upon a reasonable assessment of the potential for injury from the asserted

release; (d) not cost effective; and (e) not proximately caused by the alleged release and discharge.

54. The United States is barred from recouping incurred costs sought by the Amended Complaint because (a) it failed to make an adequate determination of whether the averred release presented an imminent and substantial danger to the public health or welfare, and (b) the proposed remedial plan of a property owner, Pennsylvania Power and Light Company, would have abated the alleged release without further action or expense by the United States.

Eleventh Defense

55. Alternatively, even if it is determined that defendant is liable for the costs incurred and those costs were necessary and appropriate under the

circumstances and consistent with the national contingency plan, then defendant is not liable for the entire amount of the response costs, but only its aliquot share based on the ownership and operation of the coal gasification plant and adjacent real estate by others and the acts, omissions and negligence of the United States Corps of Engineers, the Commonwealth of Pennsylvania, the Borough of Stroudsburg and others, and other relevant factors.

WHEREFORE, defendant Union Gas Company prays that the Amended Complaint be dismissed.

August 9, 1984

/s/

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	:	
AMERICA,	:	
Plaintiff	:	
v.	:	
	:	
UNION GAS COMPANY,	:	
Defendant and	:	
Third Party	:	CIVIL ACTION
Plaintiff	:	NO. 83-2456
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA and	:	
THE BOROUGH OF	:	
STROUDSBURG,	:	
Third Party	:	
Defendants	:	

AMENDED THIRD PARTY COMPLAINT

1. Third party plaintiff is Union Gas Company, the defendant in the above action.

2. Third party defendant, the Commonwealth of Pennsylvania (the "Commonwealth"), is a sovereign political entity which has as two of its agencies the Department of General Services ("DGS") and the Department of Environmental Resources ("DER").

3. The Commonwealth is subject to the jurisdiction and venue of this Court in that sovereign immunity has been legislatively waived by virtue of 42 Pa. C.S. § 8522(b)(4).

4. The Borough of Stroudsburg is a political subdivision of the Commonwealth of Pennsylvania with its principal place of business in Stroudsburg, Monroe County, in the Eastern District of Pennsylvania.

Cause of Action

5. On or about May 23, 1983, the plaintiff United States of America commenced the above action against Union Gas Company. On or about May 25, 1984, the United States served Union Gas with an Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "A".

6. The Amended Complaint alleges that defendant unlawfully released and discharged coal tar and oil into Brodhead Creek in Stroudsburg, Pennsylvania.

7. The United States has alleged that between 1890 and 1948 coal tar was dumped into pits adjacent to Brodhead Creek.

8. Between 1960 and 1962, at the request and with the assistance and approval of the U.S. Army Corps of Engineers, the Commonwealth, acting through DGS and DER, and the Borough of Stroudsburg, relocated the Brodhead Creek stream channel.

9. In or about 1960, the Borough of Stroudsburg received permanent easements over the portion of Brodhead Creek and its adjacent bank at issue in this proceeding.

10. In or about 1980, the Borough of Stroudsburg conveyed the aforesaid permanent easements to the Commonwealth.

11. Third party defendants are "owners" and "operators", as those terms are used in Section 197(a) of CERCLA, 42 U.S.C. § 9607(a), of the Brodhead Creek stream bed and the adjacent bank at issue in this proceeding.

12. Third party defendants caused the alleged release and discharge of coal tar and oil into Brodhead Creek by their acts, omissions and/or negligence including, inter alia:

(a) The narrowing of the channel of Brodhead Creek on its western side and restriction of the channel with dikes thereby causing significant downcutting;

(b) Excavating along the toe of the dike and backwater areas; and

(c) Failing to take corrective measures to prevent the downcutting.

13. Although Union Gas Company denies that the United States' allegations are true, or that such allegations are sufficient to state a claim against Union Gas Company, the allegations made by the United States against Union Gas Company are properly made against the third party defendants.

14. In the event the United States proves that Union Gas Company is liable on any of the counts of the Amended Complaint, which liability is expressly denied, then third party defendants are liable over to Union Gas Company, on the basis of subrogation or otherwise, for any and all damages that may be assessed against Union Gas Company.

WHEREFORE, Union Gas Company hereby demands that judgment be entered against third party defendants Commonwealth of Pennsylvania and Borough of Stroudsburg for any and all damages that may be awarded against Union Gas Company, and Union Gas Company further demands judgment for the costs of suit, and such other relief as may be proper.

August 9, 1984 /s/
 DAVID H. MARION
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 Attorneys for third
 (412) 434-8600 party plaintiff,
 Union Gas Company

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	
UNION GAS COMPANY,	:	
Defendant and	:	
Third Party	:	CIVIL ACTION
Plaintiff	:	NO. 83-2456
v.	:	
COMMONWEALTH OF PENNSYLVANIA and	:	
THE BOROUGH OF STROUDSBURG,	:	
Third Party	:	
Defendants	:	

COMMONWEALTH OF PENNSYLVANIA'S
 MOTION TO DISMISS OR IN THE
 ALTERNATIVE MOTION TO STRIKE THE
 AMENDED THIRD PARTY COMPLAINT

Third Party Defendant, Commonwealth of Pennsylvania by its attorney, Marc G. Brecher, Deputy Attorney General, hereby moves this Court pursuant to Rules 12(b)(1), 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure to either dismiss or strike the amended third party complaint filed against it.

This Motion is based upon the following reasons and the attached Memorandum of Law.

1. On May 23, 1983, the United States of America brought suit against the Union Gas Company (UGC) under §§ 104 and 107 of the Comprehensive Environmental Response Compensation Act (CERCLA), 42 U.S.C. §§ 9604 and 9607 and §§ 311(b)(3) and 311(f)(2) of the Clean Water Act, 33 U.S.C. § 1321(b)(3) and 1321(f)(2).

2. On August 3, 1983, the UGC filed a third party complaint against the Commonwealth of Pennsylvania and the Borough of Stroudsburg.

3. On or about August 9, 1983, the Commonwealth of Pennsylvania filed a motion to dismiss the third party complaint.

4. On October 28, 1983, this Court entered an Order "that the motion of the third party defendant, Commonwealth of Pennsylvania to dismiss the third party complaint as to it is granted and all claims against the Commonwealth of Pennsylvania are dismissed."

5. In a memorandum dated November 15, 1983 in support of its Order of October 28, 1983, this Court held that the third party complaint was barred by the Eleventh Amendment to the United States Constitution.

6. On August 13, 1984, the Commonwealth of Pennsylvania was served with an "Amended third party complaint" filed against it and the Borough of Stroudsburg by UGC. This pleading is virtually identical to the initially filed third party complaint which this

Court dismissed as to the Commonwealth of Pennsylvania in the Order of October 28, 1983.

7. Third party defendant, Commonwealth of Pennsylvania presently moves this Court to either dismiss or strike the third party complaint filed against it for the reasons set forth in the following paragraphs.

8. The Amended third party complaint should be dismissed for the same reasons articulated by the Court in its Memorandum of November 15, 1983 which the Commonwealth of Pennsylvania incorporates by reference herein.

9. Alternatively, the amended third party complaint, should be stricken pursuant to Rules 12(f) and 15(a) of the

Federal Rules of Civil Procedure since it was filed without leave of court.

LeROY S. ZIMMERMAN
ATTORNEY GENERAL

BY: /s/
MARC G. BRECHER
Deputy Attorney General

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206 State Office Building
Philadelphia, PA 19130
Telephone: (215) 351-2402

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	
UNION GAS COMPANY,	:	
Defendant and Third Party Plaintiff	:	CIVIL ACTION NO. 83-2456
v.	:	
COMMONWEALTH OF PENNSYLVANIA and THE BOROUGH OF STROUDSBURG,	:	
Third Party Defendants	:	JURY TRIAL DEMANDED

DEFENDANT'S ANSWER TO THE
COMMONWEALTH'S MOTION TO DISMISS OR
STRIKE THE AMENDED THIRD PARTY COMPLAINT

1 through 4 Admitted.

5. Denied as stated. The Court ruled that it lacked jurisdiction over the Commonwealth as to the causes of action alleged on the basis of the Eleventh Amendment to the United States Constitution.

6. Denied as stated. It is admitted that the Commonwealth was served with the Amended Third Party Complaint; however, the Amended Third Party Complaint differs in some respects from the original Third Party Complaint.

7. Admitted that the Commonwealth so moves.

8. Denied.

9. Denied.

WHEREFORE, defendant Union Gas Company prays that this Court deny the Commonwealth's Motion to Dismiss or strike the Third Party Complaint.

August 22, 1984

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	:	
AMERICA,	:	
v.	:	
	:	
UNION GAS COMPANY,	:	
	:	
	:	CIVIL ACTION
	:	NO. 83-2456
	:	
v.	:	
COMMONWEALTH OF	:	
PENNSYLVANIA and	:	
THE BOROUGH OF	:	
STROUDSBURG,	:	

ORDER

AND NOW, TO WIT, this 13th day
of September, 1984, upon motion of the
Commonwealth of Pennsylvania to dismiss,
IT IS ORDERED that the motion is granted
and the amended third-party complaint
filed by the Union Gas Company is
dismissed for the reasons set forth in
this court's Memorandum dated November
15, 1983.

/s/ _____
LOUIS C. BECHTLE, J.

UNITED STATES OF
AMERICA,
v.

UNION GAS COMPANY,

v.

THE BOROUGH OF
STROUDSBURG,

AND NOW TO WIT: this 4th day of February, 1985, it having been reported that the issues between the parties in the above action have been settled and upon Order of the Court pursuant to the provisions of Rule 23(b) of the Local Rules of Civil Procedure of this Court (effective January 1, 1970), it is ORDERED that the above action is DISMISSED with prejudice, pursuant to

ENTERED: 2/4/85



7th day of March in the year of our Lord one thousand nine hundred eighty.

BETWEEN BOROUGH OF STROUDSBURG, a municipal corporation, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, Grantor, party of the first part;

- and -

COMMONWEALTH OF PENNSYLVANIA, Grantee, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of One and 00/100 (\$1.00) Dollar

lawful money of the United States of America, to it well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remitted, released and quit-claimed, and by these presents, does remise, release and quit-claim unto the said party of the second part, and to its successors

rights-of-way, rights-of-entry as contained in the agreements hereinafter set forth.

1. Easement from Lester G. Abeloff and Clementine Abeloff, his wife, to the Borough of Stroudsburg et al dated March 14, 1960 and recorded in Deed Book Volume 266, Page 396.
2. Easement from Commissioners of Monroe County to the Borough of Stroudsburg et al dated March 14, 1960 and recorded in Deed Book Volume 266, Page 410.
3. Easement for Parcel 2 as more fully set forth in the Ordinance providing acquisition of easements and rights-of-way over lands along Brodheads and McMichael's Creek in the Borough of Stroudsburg as recorded on June 2, 1960 at Volume 267, Page 207 and said being tract 2 of parcel 12 as more fully set forth in the within recorded and described ordinance.
4. Easement from Pennsylvania Independent Oil Company, Inc. to the Borough of Stroudsburg et al dated March 14, 1960 and recorded in Deed Book Volume 266, Page 392.
5. Easement from Pennsylvania Power & Light Company to the Borough of Stroudsburg et al dated March 14, 1960 and recorded in Deed Book Volume 272, Page 39.
6. Easement from Shaw Insulator Company to the Borough of Stroudsburg dated March 14, 1960 and recorded in Deed Book Volume 267, Page 20.
7. Easement from Star Ribbon Corporation to the Borough of Stroudsburg dated March 14, 1960 and recorded in Deed Book Volume 267, Page 13.
8. Easement from Stroudsburg Municipal Authority to the Borough of Stroudsburg dated March 14, 1960 and recorded in Deed Book Volume 266, Page 415.
9. Easement from Stroudsburg Septic Tank Company to the Borough of Stroudsburg dated March 14, 1960 and recorded in Deed Book Volume 267, Page 55.

Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the revenues, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, claim and demand whatsoever, as well in law as in equity, of the said part Y of the first part of, he, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

As have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said part Y of the second part, its successors

and assigns forever.

In Witness Whereof,

Sealed and Delivered
in the presence of us

BOROUGH OF STROUDSBURG

[Signature]
Secretary

[Signature]
Karl Dickl, President

Witnessed, the day of the date of the above Indenture, of the above-named

I hereby certify that the complete post office and precise address of the

Granten Room 603
Mail Office Bldg., Harrisburg, Pa.
71725
Jean Hinton

State of Pennsylvania
County of Monroe

On the 7th day of March Anno Domini 1880, before me,

personally appeared the above-named Karl Dickl, President, Borough Council, Borough of Stroudsburg,

and in due form of law acknowledged the above Indenture to be his act and deed, and desired the same might be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.



[Signature]
Jean B. Citary

Commission expires, Jan. 21, 1882

FEB 9 1984

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AGREEMENT TYPE <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant Agreement <input type="checkbox"/> Assistance Amendment		6. PAYMENT METHOD <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Letter of Credit		7. TYPE OF ACTION Financial Management Center, Las Vegas New	
8. RECIPIENT Commonwealth of Pennsylvania Dept. of Environmental Resources Box 2063 Harrisburg, PA 17120		9. PAYEE Treasurer Commonwealth of Pennsylvania Harrisburg, PA 17120			
11. PROJECT MANAGER AND TELEPHONE NO. Michael Steiner (717) 787-7383 Commonwealth of Pennsylvania Box 2063 Harrisburg, PA 17120		10. RECIPIENT TYPE State Government			
12. ISSUING OFFICE (City/State) Washington, D.C. EPA OFFICIAL FILE COPY RETURN AFTER SIGNATURE Grants Specialist for this Project is: Robert Woodside PHONE: (202) 382-3283		14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. Roy Schrock, Project Officer (215) 597-2711 Environmental Protection Agency Region III 6th and Walnut Streets Philadelphia, Pennsylvania 19106			
16. EPA CONGRESSIONAL LIAISON & TEL. NO. Ms. Pat Gaskins (202) 382-5195 18. STATUTORY AUTHORITY P.L. 96-510		17. FIELD OF SCIENCE 99 19. PROJECT STEP (N/WT CO Only) N/A		21. STEP 2 + 3 & STEP 3 (N/WT Construction Only) N/A a. Treatment Level b. Project Type c. Treatment Process d. Sludge Disposal	
22. PROJECT TITLE AND DESCRIPTION "Pennsylvania Multi-site Cooperative Agreement" Cooperative Agreement for Pennsylvania to take the lead in Remedial Planning activities at National Priorities List Hazardous Waste Sites pursuant to CERCLA and the National Contingency Plan.					
23. PROJECT LOCATION (Areas Impacted by Project) Statewide County Statewide					
24. ASSISTANCE PROGRAM/CFDA Program No. & Title Superfund 2/9/84 - 6/8/86		25. PROJECT PERIOD 2/9/84 - 6/8/86		26. BUDGET PERIOD 2/9/84 - 6/8/86	
27. COMMUNITY POPULATION (N/WT CO Only) N/A		28. TOTAL BUDGET PERIOD COST \$672,254		29. TOTAL PROJECT PERIOD COST \$672,254	
FUND EPA Amount This Action EPA In-Kind Amount Unexpended Prior Year Balance Other Federal Funds Resident Contribution State Contribution Local Contribution Other Contribution Allowable Project Cost		FORMER AWARD \$672,254 -0- -0- -0- -0- -0- -0- -0-		THIS ACTION \$672,254 -0- -0- -0- -0- -0- -0- -0-	
Program Element See S.C. #5		Appropriation -		Object Class See S.C. #5	
Account Number See S.C. #5		Amount Number See S.C. #5		Obligation/Disb. Amount See S.C. #5	

TABLE A - OBJECT CLASS CATEGORY #
(Non-Construction)

1. PERSONNEL		\$194,354
2. PRINCS BENEFITS		74,146
3. TRAVEL		38,000
4. EQUIPMENT		-0-
5. SUPPLIES		3,000
6. CONTRACTUAL		326,000
7. CONSTRUCTION		-0-
8. OTHER		1,500
9. TOTAL DIRECT CHARGES		\$637,000
10. INDIRECT COSTS: RATE 13.13 % BASE	SNCF	\$ 35,254
11. TOTAL (Share: Recipient	0 % Federal	\$672,254

12. TOTAL APPROVED ASSISTANCE AMOUNT **See Special Condition No. 7**

TABLE B - PROGRAM ELEMENT CLASSIFICATION
(Non-construction)

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12. TOTAL (Share: Recipient) — % Federal — %		

12. TOTAL APPROVED ASSISTANCE AMOUNT

TABLE C - PROGRAM ELEMENT CLASSIFICATION
(Continued)

1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURES, RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS: INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Same? Recipient % Federal %)	

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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PART II-APPROVED BUDGET

TABLE A - OBJECT CLASS CATEGORY
(Non-construction)

ASSISTANCE IDENTIFICATION NO.:

TOTAL APPROVED ALLOWABLE

1. PERSONNEL		
2. PRIME BENEFITS		
3. TRAVEL		
4. EQUIPMENT		
5. SUPPLIES		\$ 9,500
6. CONTRACTUAL		
7. CONSTRUCTION		
8. OTHER		\$ 9,500
9. TOTAL DIRECT CHARGES		
10. INDIRECT COSTS: RATE	0 % BASE	
	0 % Federal	100 %
11. TOTAL (Share: Recipient)		\$ 9,500
12. TOTAL APPROVED ASSISTANCE AMOUNT		\$ 9,500

TABLE B - PROGRAM ELEMENT CLASSIFICATION
(Non-construction)

1.			
2.			
3.			
4.			
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12. TOTAL (Share: Recipient _____ % Federal _____ %)			

TABLE C - PROGRAM ELEMENT CLASSIFICATION
(Continued)

1. ADMINISTRATION EXPENSE	
2. PRELIMINARY EXPENSE	
3. LAND STRUCTURAL RIGHT-OF-WAY	
4. ARCHITECTURAL ENGINEERING BASIC FEES	
5. OTHER ARCHITECTURAL ENGINEERING FEES	
6. PROJECT INSPECTION FEES	
7. LAND DEVELOPMENT	
8. RELOCATION EXPENSES	
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES	
10. DEMOLITION AND REMOVAL	
11. CONSTRUCTION AND PROJECT IMPROVEMENT	
12. EQUIPMENT	
13. MISCELLANEOUS	
14. TOTAL (Lines 1 thru 13)	
15. ESTIMATED INCOME (If applicable)	
16. NET PROJECT AMOUNT (Line 14 minus 15)	
17. LESS: INELIGIBLE EXCLUSIONS	
18. ADD: CONTINGENCIES	
19. TOTAL (Show: Recipient _____ % Federal _____ %)	
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$

PART III—AWARD CONDITIONS

a. GENERAL CONDITIONS:

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFR Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS:

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

1. The amount shown in block 13, Proposed Funding, of the State's application is \$4,776,254. The State agrees, however, that the amount to be funded at this time is the amount (\$672,254) shown in Section B, on page 5 of 10 of its application as the "Initial Grant". The State further understands that current EPA financial and program plans for future funding under this agreement anticipate amendments for several Remedial Investigations and Feasibility Studies (RI/FS). The EPA will evaluate the State's requests for those RI/FS projects, in light of the availability of funds and national priorities, as they are submitted. While EPA intends to provide funds for RI/FS projects, award of this Agreement does not commit or otherwise obligate EPA to provide such future funding.
2. Part of the funding for State costs under this Agreement relates to Remedial Investigations/Feasibility Studies (RI/FS's). The budget estimates for those costs are based on the preparation of eight (8) RI/FS's. Until this Agreement is amended to provide funding for RI/FS's, the State may draw down from the funds awarded only such amounts as are necessary to prepare for the procurement of the RI/FS contractor(s). When funds are made available, the State may draw down amounts for RI/FS coordination and management in proportion to the number of projects actually funded (e.g., if EPA provides funds for five (5) RI/FS's the State may use approximately sixty-five percent (65%) of the amount budgeted for management and coordination of RI/FS's). The State must receive written prior approval of the EPA Regional Site Project Officer to use funds in excess of such proportional amounts.
3. The award of this agreement is conditional upon receipt, with the State's acceptance of this agreement, of a Statement from the State's Governor or Attorney General that the Department of Environmental Resources (DER) has the authority to enter into and execute the terms of this Agreement.

4. The recipient agrees to the following conditions in accepting this cooperative agreement for the letter of credit method of financing:

- a) Cash drawdowns will occur only when needed for disbursements.
 - b) Timely reporting of cash disbursements and balances will be provided as required by the EPA Letter of Credit Users Manual.
 - c) The same standards of timing and reporting will be imposed on secondary recipients, if any.
 - d) When a drawdown under the letter of credit occurs, the recipient will show on the back of the voucher (Form TFS-5401) the Cooperative Agreement number, the appropriate EPA account number, and the drawdown amount applicable to each activity account (see attached "Instructions for Using the Superfund Account Number Under Cooperative Agreements"). The eighth digit of the account number (see item 39, page 1 of the Cooperative Agreement) is the code to the appropriate activity assignment:
- L - Remedial Planning, consisting of the following subactivities:
- Remedial Investigation/Feasibility Study
 - Remedial Design
- A - Support and Maintenance
- e) When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not draw down from another activity or site account without written permission from the EPA Project Officer and Award Official.
 - f) Funds remaining in an account after completion of an activity may either be returned to the EPA or adjusted to another activity or site at EPA's discretion.
 - g) When a subactivity is completed, the recipient will submit a Financial Status Report (Standard Form 269) within 90 days to the EPA Project Officer.

Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

5. Fiscal information for this award is as follows:

<u>Site</u>	<u>P.E.</u>	<u>FY</u>	<u>Appropriation</u>	<u>DCN</u>	<u>Account #</u>	<u>Obj. Class</u>	<u>Obligation</u>
DER	TFAY9A	84	68/20X8145	E2B020	4TPA72EA00	41.83	\$346,254
Dorney	TFAY9A	84	68/20X8145	E2E024	4TPA723L86	41.83	\$ 34,500
Randerson	TFAY9A	84	68/20X8145	E2E027	4TPA723LA3	41.83	\$ 34,500
E. Mt. Zion	TFAY9A	84	68/20X8145	E2E025	4TPA723L98	41.83	\$ 34,500
Berks	TFAY9A	84	68/20X8145	E2E022	4TPA723L64	41.83	\$ 34,500
Voortman	TFAY9A	84	68/20X8145	E2E031	4TPA723LA1	41.83	\$ 34,500
Walsh	TFAY9A	84	68/20X8145	E2E032	4TPA723L87	41.83	\$ 34,500
Baldwin	TFAY9A	84	68/20X8145	E2E021	4TPA723LA5	41.83	\$ 25,000
Letterkenry	TFAY9A	84	68/20X8145	E2E028	4TPA723LA2	41.83	\$ 25,000
Modern	TFAY9A	84	68/20X8145	E2E029	4TPA723LA4	41.83	\$ 25,000
Sunset	TFAY9A	84	68/20X8145	E2E030	4TPA723L82	41.83	\$ 25,000
Brodhead	TFAY9A	84	68/20X8145	E2E023	4TPA723L28	41.83	\$ 9,500
Havertown	TFAY9A	84	68/20X8145	E2E026	4TPA723L54	41.83	\$ 9,500

6. The Director, Grants Administration Division, has approved a deviation from 40 CFR 30.308 which permits the recipient to charge allowable costs incurred on this budget period effective February 9, 1984, provided this agreement is accepted without change within three calendar weeks of its receipt. (See 40 CFR 30.305).

7. Recipient must comply with the budget breakdowns as provided in the one oversight and 12 site-specific budgets. Refer to pages 3 - 15.

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PART IV

E: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the Commonwealth of Pennsylvania, Dept. of Environmental Resources

100 % of all approved costs incurred up to and not exceeding \$ 672,254

the support of approved budget period effort described in application (including all application modifications) cited in Item 22 of this Agreement, submitted 2/2/84

included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS Grants Administration Division Environmental Protection Agency Washington, D.C. 20460	ORGANIZATION/ADDRESS Office of Solid Waste & Emergency Response Environmental Protection Agency Washington, D.C. 20460
DATE AND TITLE <i>Nicholas DeBenedictis</i> Special, Grants Operations Branch (PM-216)	DATE FEB 9 1984

Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance actions. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of the agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee to the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION Signature: <i>Nicholas DeBenedictis</i> Typed Name and Title: Nicholas DeBenedictis, Secretary of Environmental Resources	DATE 2/22/84
---	-----------------

Approved as to Legality and Form:

A.M. Fied

Assistant Attorney General

Date

J. C. C. C.

Chief, Assistant Counsel
Department of Environmental Resources

Date

2/17/84

Approved:

N.A.

Secretary of Budget and Administration

Date

I hereby certify that funds in the amount of _____ are
available under Appropriation.

N.A.

Comptroller

Date

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BROOKHEAD CREEK

FILE D

0 100 200 FEET



2000

REINFORCED CONCRETE
LIGHT CO.

HAVER
JAY INC.

STROUDS
GAS CO.

BARRETT CEMETERY

STROUDS GAS CO. STATION

CONCRETEWORK OF PA
STROUDS OF STROUDS
PLANT CEMENT, PRODUCT

STROUDS OF STROUDS
REVERSE TREATMENT PLANT

MARSHALLS CREEK

FILE D

EXHIBIT: SITE LAYOUT

108

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NOTICE OF APPEAL
TO
U.S. COURT OF APPEALS, THIRD CIRCUIT

U.S. DISTRICT COURT Eastern/Pennsylvania
(DISTRICT/STATE)

Philadelphia
(LOCATION)

U.S. TAX COURT ()

CIRCUIT COURT
DOCKET NUMBER _____
(leave blank)

FULL CAPTION IN DISTRICT COURT
AS FOLLOWS:

DISTRICT OR
TAX COURT
DOCKET NO. 83-2457

DISTRICT OR
TAX COURT
JUDGE _____

United States of America

vs.

Union Gas Company

vs.

Commonwealth of Pennsylvania and
The Borough of Stroudsburg

Notice is hereby given that Union
Gas Company appeals to the United
(Named Party)

States Court of Appeals for the Third
Circuit from (x) Judgment () Order ()
Other (Specify) _____

_____ entered in
this action on February 4, 1985.
(Date)

DATED:

See sheet attached
Counsel for Appellant - Signature

Name of Counsel - Typed

Address

Tel. No. - U.S. Gov't FTS or Other

See sheet attached
Counsel for appellee

Address

Tel. No. - U.S. Gov't FTS or Other

NOTE: USE ADDITIONAL SHEETS if all
appellants and/or all counsel
for appellees cannot be listed
on the Notice of Appeal sheet.

109a(a)

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